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May 27, 2014

**BY HAND**

The Hon. Karen V. Gregory  
Secretary of Federal Maritime Commission  
800 North Capitol St.  
Room 1046  
Washington, D.C. 20573

Re: Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services, Docket No. 14-04

Dear Ms. Gregory:

Enclosed for filing are: (1) an original true copy and five (5) additional copies of the Answer of Respondent Crowley Caribbean Logistics, and (2) the Notices of Appearance for Eric C. Jeffrey and Lindsey M. Nelson in the above-referenced matter.

Please contact me if you have any questions.

Sincerely,

Eric C. Jeffrey  
Counsel for Crowley Caribbean Logistics, LLC

Lindsey M. Nelson  
Counsel for Crowley Caribbean Logistics, LLC

Enclosure

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-04**

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**EDAF ANTILLAS, INC.**

**v.**

**CROWLEY CARIBBEAN LOGISTICS, LLC;  
IFS INTERNATIONAL FORWARDING, S.L.; and  
IFS NEUTRAL MARITIME SERVICES**

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**ANSWER OF RESPONDENT CROWLEY CARIBBEAN LOGISTICS**

COMES NOW respondent Crowley Caribbean Logistics (“CCL”), by and through its attorney, Eric C. Jeffrey, Esq., as and for its answer to Complainant’s complaint herein respectfully alleges and states as follows:

1. Answering Paragraph “1” of Complainant’s Complaint, admits the first two sentences and alleges a lack of knowledge or information sufficient to form a belief as to the truth of the legal conclusion stated in the third sentence.
2. Answering Paragraph “2” of Complainant’s Complaint, admits, but states that the last sentence is irrelevant to this proceeding.
3. Answering Paragraph “3” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
4. Answering Paragraph “4” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
5. Answering Paragraph “5” of Complainant’s Complaint, Respondent admits CCL is a non-vessel operating common carrier and ocean freight intermediary, but denies that it was acting

as such in relation to Complainant, and denies each and every remaining allegation contained in paragraph “5”.

6. Answering Paragraph “6” of Complainant’s Complaint, admits as to CCL, and alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations as to IFS.
7. Answering Paragraph “7” of Complainant’s Complaint, denies that the Shipping Act provides any cause of action regarding CCL or any jurisdiction over CCL with regard to the allegations in the Complaint.
8. Answering Paragraph “A” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations and asserts that Exhibit 1 is (i) in a foreign language without a verified translation, contrary to Rule 7, and (ii) largely illegible.
9. Answering Paragraph “B” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations, except that Exhibit is an undated certificate of compliance, apparently issued in connection with some, unknown, shipment.
10. Answering Paragraph “C” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
11. Answering Paragraph “D” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
12. Answering Paragraph “E” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations, except that Respondent Neutral did issue a bill of lading for the shipment, and states that Exhibits 3 and

4 are (i) partially in a foreign language, without the verified translation required by Rule 7, and (ii) largely illegible.

13. Answering Paragraph “F” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations.
14. Answering Paragraph “G” of Complainant’s Complaint, admits.
15. Answering Paragraph “H” of Complainant’s Complaint, admits that CCL sent a notice to Complainant regarding inspection, but denies the characterization of that notice, which speaks for itself.
16. Answering Paragraph “I” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
17. Answering Paragraph “J” of Complainant’s Complaint, admits.
18. Answering Paragraph “K” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, but specifically denies the allegations in Footnote 1 that CCL delayed any action based on a payment dispute among respondents.
19. Answering Paragraph “L” of Complainant’s Complaint, denies. CCL was not a carrier with regard to the shipment.
20. Answering Paragraph “M” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
21. Answering Paragraph “N” of Complainant’s Complaint, alleges insufficient knowledge regarding timeliness.
22. Answering Paragraph “O” of Complainant’s Complaint, admits.



23. Answering Paragraph “P” of Complainant’s Complaint, admits that the goods were cleared for entry into the commerce of the United States, but otherwise alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations.
24. Answering Paragraph “Q” of Complainant’s Complaint, admits that there was a *de minimis* amendment that only one character (“A”) of the bill of lading was changed.
25. Answering Paragraph “R” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
26. Answering Paragraph “S” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
27. Answering Paragraph “T” of Complainant’s Complaint, admits, but asserts that it is totally irrelevant to the proceeding.
28. Answering Paragraph “U” of Complainant’s Complaint, admits that it acted only as an agent for the other Respondents, but otherwise denies the allegations contained therein.
29. Answering Paragraph “V” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
30. Answering Paragraph “W” of Complainant’s Complaint, alleges a lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, except denies that CCL delayed any action as a result of a dispute among Respondents.
31. Answering the ‘Cause of Action’ in Complainant’s Complaint, denies each and every alleged violation of the Shipping Act.

## **AFFIRMATIVE DEFENSES**

Respondent hereby asserts the following affirmative defenses:

### **First Affirmative Defense**

Respondent alleges that the FMC lacks subject matter jurisdiction over the Complaint insofar as it related to CCL. The Shipping Act provides the FMC with authority only over regulated entities when acting in their regulated capacity. By Complainant's own admission, CCL was not acting as a carrier with respect to this shipment, but rather as a mere agent of the actual carrier(s). The Shipping Act does not authorize the FMC to regulate agents of carriers. See e.g., *Landstar Express America, Inc.*, 569 F. 3<sup>rd</sup> 493 (D.C. Cir. 2009).

### **Second Affirmative Defense**

Respondent alleges Complainant's request for damages is barred by rules regarding the liability of agents. Complainant admits that CCL was acting in the capacity of agent for a disclosed principal, and accordingly the liability, if any, flows to the principal, not the agent.

### **Third Affirmative Defense**

Respondent alleges Complainant's failure to state a plausible claim for relief. Complainant has alleged no facts sufficient to support a reasonable inference that the Complainant is entitled to any relief the FMC can grant.

### **Fourth Affirmative Defense**

Complainant's claims, or parts thereof, are barred by the release entered into by the terms of and agreement within the bill of lading between Neutral and Complainant, in which Complainant released CCL from any action arising out of or relating to the letter agreement. See CCL Exhibit 1.

#### Fifth Affirmative Defense

The claim for indemnity is barred under the traditional tenets of agency law due to the fact that Complainant did not have a contract with CCL and Complainant had no right to rely on the alleged representations made by CCL.

#### Sixth Affirmative Defense

Complainant's entitlement to damage, if any is limited by the Clause Paramount in the bill of lading to \$500 per package, as agreed to by Complainant. Complainant asserts that Complainant is a shipper within the meaning of the Shipping Act, but designates in the Complaint the parent company as "Complainants Shipper". Only the entity that paid the freight may recover reparations under the Shipping Act as interpreted by the FMC.

#### Seventh Affirmative Defense

Complainant asserts that CCL violated Section 10(b)(8) by giving an undue or unreasonable preference or advantage to shippers of other cargo in the same container. Complainant fails however, to allege two essential elements of a 10(b)(8) claim: (i) that the shipment was pursuant to a tariff, and (ii) that Complainant had a competitive relationship with one or more of the allegedly advantaged shippers. Further, even if there was a tariff involved, it was not CCL's tariff.

#### Eight Affirmative Defense

Complainant's claim that CCL violated Section 10(b)(3) by reason of unfair or unjustly discriminatory actions is unfounded. This section applies only to retaliation against a shipper because it filed a complaint, patronized another shipper, or similar reasons. There is no allegation of any retaliation by CCL or of any improper motives for its actions.

### Ninth Affirmative Defense

Complainant's claim that CCL violated 10(d)(1) by failing to establish, observe, and enforce just and reasonable regulations and practices is unfounded and absurd. CCL handled 4,579 containers in 2013, and of those 428 came from Spain, showing CCL operates within reasonable practices and regulations. Further, CCL has standard order of procedures which are applied consistently to all shipments. See CCL Exhibit 2.

### ADDRESSES

1. The name, address, and email address of Respondent CCL is Crowley Caribbean Logistics, LLC, Centro Mercantil Internacional, Edificio 11, Guaynabo, PR 00965, mailing address as PO Box 70208, San Juan, PR 00936-3208, and email address [alan.twaits@crowley.com](mailto:alan.twaits@crowley.com).
2. The name, address and email address of Respondent CCL's attorneys is Eric Jeffrey and Lindsey Nelson, Nixon Peabody LLP, 401 Ninth Street, N.W., Washington D.C. 20004, and email addresses [ejeffrey@nixonpeabody.com](mailto:ejeffrey@nixonpeabody.com) and [lnelson@nixonpeabody.com](mailto:lnelson@nixonpeabody.com).
3. Respondent CCL anticipates that Respondents IFS and Neutral will provide information regarding themselves and their representative(s)/attorney(s) but believes that the addresses for Respondents IFS and Neutral as provided by Complainant, are correct.

### NEED FOR HEARING

Respondent CCL notes that Complainant has not requested a hearing, and agrees that no hearing is necessary or appropriate.



WHEREFORE, Respondent prays that the Complaint in this proceeding be handled as followed:

1. The Complainant take nothing of his Complaint on file herein;
2. For attorney's fees incurred in the defense of Complainant's action against this answering Respondent;
3. For costs and disbursements incurred herein;
4. For such other and further relief as the Commission may deem just and proper under the premises.
5. For the Complaint to be dismissed as to CCL.

Dated: May 27, 2014

Respectfully submitted,

BY: 

ERIC C. JEFFREY

LINDSEY M. NELSON

**NIXON PEABODY LLP**

401 Ninth Street, NW, Suite 900

Washington, DC 20004

(202) 585-8000

Counsel for Crowley Caribbean Logistics, LLC

**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "Alan R. Twaits", is written over a horizontal line.

Alan R. Twaits

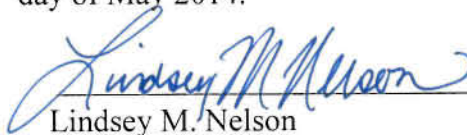
Vice President & Chief Counsel – Corporate Legal Services

Crowley Maritime Corporation / Crowley Caribbean Logistics, Inc.

*Certificate of Service*

I hereby certify that I have this day served the foregoing document upon all parties of record by mailing a copy to each person.

Dated at Washington, DC, this 27<sup>th</sup> day of May 2014.



Lindsey M. Nelson

Counsel for Crowley Caribbean Logistics, LLC

# CCL Exhibit 1



**Shipper:**  
EDITORIAL EDAF, S.L.  
JORGE JUAN, 68  
MADRID, ESPAÑA  
TEL: 91 435 82 60 FAX: 91 431 52 81

BILL OF LADING

IFSM

Bill of lading no.:

424555

**Consignee:**

EDAF ANTILLAS, INC.  
1594 PINERO AVE CAPARRA TERRACE  
SAN JUAN PR. 00921-1413, PUERTO RICO  
TEL: (787) 707 17 92 FAX: (787) 707 17 97  
ATT.: SR. D. CARLOS MATOS

**Notify party:**

EL MISMO



For particulars of delivery apply with this B/L to:

CROWLEY CARIBBEAN LOGISTICS LLC  
CENTRO MERCANTIL INT. - Edif. 11 - PO BOX 361927  
PUERTO RICO 00936-7314 - 00936  
PUERTO RICO  
Phone: 787-793.8575 al 8579 - Fax: 787-793.8717

**Ocean vessel:**

MIDAS

**Voyage:**

AH31R

**Place of receipt:**

VALENCIA

**Port of loading:**

VALENCIA

**Port of discharge:**

SAN JUAN DE PTO. RICO

**Place of delivery:**

SAN JUAN

COPY NOT NEGOTIABLE

Marks & Nos.:	No. packages	Kind of pack	Description of goods	Gross weight Kg	M3
EDAF ANTILLAS	53 BULTOS	s.l.w.a.c.		1.202,00	2,640
LCL/LCL			53 BULTOS INTO 2 PALLETS BOOKS, PARTIDA ARANCELARIA: 4901.9900 EXPRESS B/L FREIGHT COLLECT ON BOARD		
		A.M.S.			
		IFSM424555			
		H.S. Code:			
		490199			

**Container N°:**

DVRU0610860

**Total number of packages or other units received by "IFS" (in words)**

FIFTY THREE

**Seal N°:**

B5635389

Issued in apparent good order and condition except as indicated herein the total number of containers, or other packages or units shown above for transportation from the place of receipt to the port of discharge subject to the terms hereof.

All statements in this Bill of Lading, such as "s.l.w.a.c." or "s.l.s.a.c." mean that the goods were loaded, packed or stuffed by the Merchant and have not been checked by the Carrier.

One of the original Consignment Trans. B/Ls of delivery must be submitted duly signed in accordance with the terms of delivery Order. In accordance with this Bill of Lading the carrier is released by Article 1 on the basis of the stipulations, exceptions, terms and conditions on face and back hereof written, to the extent provided or provided as fully set forth by the Merchant, any local law or privilege to the contrary notwithstanding, and as to all agreements or receipts for the goods engaged are superseded by this Bill of Lading.

In the witness whereof the carrier of origin of this Bill of Lading stated below, all of the conditions and to be in full force and effect, being accomplished to, attached to, void.

Freight & charges	Prepaid	Collect	Cur.
EX WORKS CHARGES		452,00	USD
AMS		56,40	USD
OCEAN FREIGHT ALL IN USD	+	272,99	USD
LOCAL EXPENSES (SAN JUAN)		79,20	USD
DOCUMENT TRANSFER FEE (SAN JUAN)		25,00	USD

**Prepaid /Payable at Destination****Number of original B/Ls**  
0/ Zero**Place and date of B/L issue**  
VALENCIA, JULY 21TH, 2013**Forwarding agents**

SPACE CARGO EXPORT, S.A. (EXP)  
Phone: 917482991/CONT:917482995  
Fax: 913293525

4302376

IFS AS AGENTS OF  
NEUTRAL MARITIME SERVICE AS  
CARRIER





# CCL Exhibit 2





## **SOP IMPORTS DEPARTMENT**

### **MISSION:**

**Receive cargo and manage in an effective manner maintaining high standard customer services to all our customers. Keeping in mind our core values of “Customer Centric & Maximize Customer Profitability”.**

### **Standard Steps in Entering Voyages:**

- 1. Pre-Alert Received – Confirm Agent via email receipt**
- 2. Print Pre-Alert and prepare folder with ETA & Checklist**
  - ✓ Organize paperwork**
- 3. Enter voyage in system and assign voyage number according to Origin (HGK, PTY, COL, VAL, MIA, CFZ, MIS, CHI, ANT)**
- 4. Transmit Voyage in AMS (If applicable)**
  - ✓ Follow up transmission until voyage is Matched with Customs**
  - ✓ Send Print Screen to Agent after transmission and match**
- 5. Send ISF Notifications to customers and Brokers**
  - ✓ Pre-Notification to all customers with EDD & Aprox. ETA**



**6. Complete Voyage in System**

- ✓ Enter all HBL's
- ✓ Enter HBL's charges (Request Rated HBL's from Agent)
- ✓ Create ATME
- ✓ Update notes

**7. Follow-up Notice of Arrival with Shipping Line**

- ✓ Request MBL
- ✓ Request Scanning Invoice
- ✓ Verify Tax Release of MBL (Master Bill of Lading)
- ✓ Prepare all check requests and invoice approvals

**8. Prepare (PTT) Permit to Transfer**

**9. Submit paperwork to Accounting**

- ✓ Master Bill of Lading
- ✓ HBL's
- ✓ Manifest
- ✓ Debit Notes
- ✓ Credit Notes
- ✓ Any invoice from Agent related to voyage

**10. Receipt of PTT Release (Validated)**

- ✓ Verify if container is going to Inspection or direct to our warehouse
- ✓ Copy of all documents for file

- ✓ Deliver PTT (Delivery Order) to Operations for movement of container. Notify Operations if container is going to Inspection or coming directly to our warehouse.
- ✓ Update notes in system
- ✓ Update tracking information in system (Ready for Movement or Inspection)
- ✓ If container is transferred to Inspection (Castillo) it is the coordinator's responsibility to follow up with customs until it is released.

11. Transmit to Tax Office (MEPS-SISCON)

12. Create MISC Invoices

13. Notify Customers and enter notes in Notify Section

14. Coordinate Deliveries if applicable

- ✓ Prepare Delivery Document
- ✓ Prepare Delivery Ticket

15. Scan documents in system (HBL, Transshipment charges, Manifest, MBL, PTT Validated, Debit or Credit Notes, etc.)

## **OTHER RESPONSABILITIES:**

1. Trans-shipments – Prepare Inbond Paperwork (7512)
  - ✓ These are to be worked every **Tuesday and Wednesday** prior to sailing of current week
  - ✓ Provide Export Department of paperwork
    - Copy of 7512
    - Commercial Invoice
2. Storage & 2<sup>nd</sup> Notifications – **to be worked every Thursday**
  - ✓ Coordinator is responsible of re-notifying those shipments that are in our warehouse over 10 days. Coordinator must update notes in system.
  - ✓ Coordinator should also maintain our Agents updated of all shipments pending in warehouse for their assistance.
  - ✓ All shipments in our warehouse over **30 days**, a Certified Letter must be sent to customers.
3. **Daily Phone Calls, Delivery Orders & Emails**
  - ✓ Coordinator is responsible in answering and replying to all emails and phone calls in a timely, effective, complete manner, always maintaining our high standard customer service.
  - ✓ Coordinator is responsible in providing Delivery Orders to customers that are present in our facilities to pickup cargo
  - ✓ Scan all documents from customers in system such as; checks or payments, customs releases, tax releases and Original Bill of Ladings.

4. Closing of Inbonds (IE)

- ✓ All those trans-shipments that sailed the prior week, next **Monday** these IE should be closed in Cargo Manager

5. Receipt of Payments and documents from customers

- ✓ Coordinator will receive payments from customers and these are to be delivered same day to person in charge of cash or check receipts.
  - Keep copy for files and scan
  - Provide copy of invoice or HBL

Employee Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-04**

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**EDAF ANTILLAS, INC.**

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**CROWLEY CARIBBEAN LOGISTICS, LLC;  
IFS INTERNATIONAL FORWARDING, S.L.; and  
IFS NEUTRAL MARITIME SERVICES**

---

**NOTICE OF APPEARANCE**

Please enter my appearance in this proceeding as counsel for Crowley Caribbean Logistics, LLC.

I request to be informed of service of the administrative law judge's initial or recommended decision and of the Commission's decision in this proceeding by:

☐ telephone (In the event that I am not available when you call, appropriate advice left with my office will suffice.)

☐ facsimile transmission

☒ electronic mail

Eric Jeffrey  
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Eric Jeffrey

**FEDERAL MARITIME COMMISSION**

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[lnelson@nixonpeabody.com](mailto:lnelson@nixonpeabody.com)

  
Lindsey M. Nelson